

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARY BRADY, ¹	§
	§
Respondent Below-	§ No. 720, 2009
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
DIVISION OF FAMILY SERVICES,	§ in and for New Castle County
	§ File No. 08-12-02TN
Petitioner Below-	§ Case No. 08-38524
Appellee.	§

Submitted: May 27, 2010

Decided: July 7, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 7th day of July 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26.1, her attorney's motion to withdraw, and the Division of Family Services' response thereto, it appears to the Court that:

(1) The respondent-appellant, Mary Brady ("Mother"), filed this appeal from a Family Court order, which terminated her parental rights with respect to her minor son ("the Child"). Brady's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26.1. Counsel asserts that

¹ The Court previously assigned a pseudonym to the appellant pursuant to Supreme Court Rule 7(d).

she has made a conscientious review of the record and the law and can find no arguable issue to raise on appeal. Brady responded to her counsel's motion and brief.

(2) The record reflects that the Child was born on May 19, 2006. The Family Court awarded custody of the Child to DFS on December 21, 2007,² following the death of the Child's three-month-old sister in Mother's home.³ Physical placement of the Child initially was given to a maternal cousin. As a result of animosity between Mother and her cousin, however, the Child was placed in a foster home, along with a younger sibling, on February 8, 2008, where he has lived since. At an adjudicatory hearing on March 25, 2008, Mother stipulated that the Child was dependent and neglected because of Mother's pending criminal charge associated with her daughter's death. At the time of that hearing, the Child's Father was unknown.⁴ In April 2008, Mother signed a case plan with DFS that required her to be able to: (i) obtain employment or other income to allow her to provide for the Child's needs; (ii) maintain stable housing; (iii) participate in

² Mother has been represented by appointed counsel throughout these proceedings since December 2007.

³ As a result of her daughter's death, Mother pled guilty in November 2008 to a misdemeanor charge of endangering the welfare of a child.

⁴ The Father later was identified through paternity testing. Father's parental rights were terminated at the same hearing as Mother's. Father's parental rights are not at issue in this appeal.

a parenting program; (iv) complete a substance abuse program; and (v) comply with the conditions of her probation/parole in Pennsylvania.

(3) At a dispositional hearing held on July 2, 2008, Mother reviewed and discussed a written reunification plan, which was entered as an order of the Family Court. Prior to the July 2008 hearing, Mother had completed the parenting program and her visitation history with the Child had been good. She had been discharged, however, from a drug treatment program due to several positive tests for PCP. On July 3, 2008, Mother abruptly cancelled a visit with the Child, moved to Pennsylvania, and did not see the Child again until August 14, 2008. In August 2008, Mother was arrested in Pennsylvania for attempting to smuggle drugs into a correctional facility. As a result of these new charges, she also was charged with violating her parole in Pennsylvania. She was incarcerated in Pennsylvania on these charges in October 2008.

(4) At a review hearing on October 24, 2008, the Family Court continued custody of the Child with DFS. In December 2008, DFS filed a petition to terminate Mother's parental rights. A permanency hearing was held on June 2, 2009. At the time, Mother had not seen the Child since October 2, 2008. The Family Court changed the permanency goal for Mother from reunification to termination of parental rights and adoption.

Finally, on October 6, 2009, the Family Court held a termination hearing. The Family Court heard testimony regarding Mother's history in the case from Mother's parole officer in Pennsylvania, two DFS case managers, a DFS investigator, the Child's foster mother, and Mother herself. Immediately following the hearing, the trial judge announced her decision to terminate Mother's parental rights.

(5) In its order terminating Mother's parental rights, the Family Court found that DFS had established by clear and convincing evidence that Mother's parental rights should be terminated because she was not able or had failed to plan adequately for the Child's physical needs and his mental and emotional health and development.⁵ In support of that conclusion, the Family Court noted that Mother had no home for the Child and no employment with which to support him.⁶ Mother had a history of neglect of her children, reflected in her guilty plea related to her daughter's death and her termination of parental rights with respect to her eldest son.⁷ Mother had not provided primary care for the Child since December 2007 when he was taken into DFS custody.⁸ Moreover, Mother had not even seen the Child in

⁵ 13 Del. C. § 1103(a)(5).

⁶ *Id.* § 1103(a)(5)a4.

⁷ *Id.* § 1103(a)(5)a2.

⁸ *Id.* § 1103(a)(5)a1.

more than a year because of her incarceration in Pennsylvania pending trial on criminal charges.⁹ The Family Court also noted that failure to terminate Mother's parental rights would result in continued risks to the Child, among other reasons, because of Mother's significant substance abuse problems, her failure to fully commit to her reunification plan prior to her incarceration, and the emotional instability that would result if the Child were taken out of the home where he has lived with his foster family for two years.¹⁰ The trial court further found that DFS had offered Mother a reasonable case plan to effectuate reunification but that Mother had failed to take advantage of the resources provided to her and had failed to comply with the terms of the case plan.

(6) The trial court also concluded that DFS had established by clear and convincing evidence that termination of Mother's parental rights was in the Child's best interests.¹¹ Specifically, the trial judge noted that the Child had had almost no relationship with Mother or with any of her relatives for more than year but had developed a very close relationship with his foster family since he entered their care in February 2008. The Child has bonded with his foster parents, who wish to adopt him, as well as with his foster

⁹ *Id.* § 1103(a)(5)a3.

¹⁰ *Id.* § 1103(a)(5)a5.

¹¹ 13 Del. C. § 722.

parents' four adopted children, who are very protective of the Child. Moreover, the Child is being raised with his younger half-brother, with whom he shares a room in his foster family's home. Finally, Mother's history of substance abuse, criminal activity, and failure to fulfill her parental responsibilities with respect to the Child all weighed in favor of terminating her parental rights.

(7) This Court's review of a Family Court decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.¹² To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.¹³ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and are not clearly wrong.¹⁴

(8) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.¹⁵ First, the court must determine, by clear and convincing evidence, whether a statutory basis exists

¹² *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

¹³ *Id.* at 440.

¹⁴ *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).

¹⁵ 13 Del. C. § 1103(a).

for termination.¹⁶ Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the child's best interests.¹⁷

(8) In this case, we have reviewed the parties' positions and the record below very carefully. We conclude that there is ample evidence on the record to support the Family Court's termination of Mother's parental rights on the statutory basis that she had failed to plan and because termination was clearly in the Child's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, the judgment below shall be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁶ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

¹⁷ *Id.*